

## Appendix E: Participant Direction of Services

### Appendix E: Participant Direction of Services E-1: Overview (1 of 13)

**a. Description of Participant Direction. In no more than two pages, provide an overview of the opportunities for participant direction in the waiver, including: (a) the nature of the opportunities afforded to participants; (b) how participants may take advantage of these opportunities; (c) the entities that support individuals who direct their services and the supports that they provide; and, (d) other relevant information about the waiver's approach to participant direction.**

#### Opportunities for Participant Direction:

All waiver participants will have the opportunity to: (1) exercise employer authority to recruit, hire, supervise and discharge qualified PDWs who provide PDCS and (2) exercise budget authority to purchase allowable and approved individual-directed goods and services using a PDS budget. Financial Management Services (FMS) and Support Broker services will be provided as administrative activities by a single, District-wide Vendor Fiscal/Employer Agent (VF/EA) FMS-Support Broker entity selected through an RFP process.

Waiver participants who choose to enroll in the Services My Way program and self-direct their PDCS and individual-directed goods and services will have access to other traditional services available under the EPD waiver. Thus, waiver participants may elect to receive either traditional HCBS or participant-directed HCBS or a combination of both. Duplication of services will not occur.

#### How Participants Access Participant-Directed Services:

Both current and new waiver participants will have the opportunity to elect to enroll in the Services My Way program and self-direct approved PDCS and individual-directed goods and services.

#### Current Waiver Participants –

For current waiver participants, when enrollment begins for the Services My Way program, the assigned waiver case manager will inform each waiver participant about the program and the opportunity to self-direct approved PDCS and individual-directed goods and services using standard, easily understandable information approved by DHCF. The process will be repeated each time a waiver participant is reassessed for services and his/her person-centered ISP is updated if he/she is not enrolled in the Services My Way program. All current waiver participants will have the option to enroll in the Services My Way program and develop a new person-centered ISP and a PDS budget that includes PDCS and individual-directed goods and services. The waiver case manager will discuss the traditional and participant-directed service

delivery options to ensure each waiver participant understands the different opportunities available, their roles and responsibilities and options for receiving supports.

If a waiver participant wishes to enroll in the Services My Way program, the waiver case manager will have the participant complete a Consumer Inquiry Form and provide a copy to the Services My Way Program Coordinator. Then, the waiver case manager will review the requirements of the program with the participant, and oversee their signing of the Participant Consent Form. The waiver case manager will also develop, with the waiver participant, a revised person-centered ISP, including the participant-directed service option and a risk management plan using a person-centered approach. He/she will also compute the waiver participant's PDS monthly allocation amount using a standard methodology developed by DHCF. The waiver case manager will send the executed Participant Consent Form along with the waiver participant's revised person-centered ISP, risk management plan and PDS monthly allocation amount to the Services My Way Program Coordinator. The Services My Way Program Coordinator will then forward these documents and a referral for enrollment into the Services My Way program to the VF/EA FMS-Support Broker entity. The VF/EA FMS-Support Broker entity will assign a support broker to the waiver participant and commence the enrollment process.

The PDS budget, developed by the waiver participant and his/her support broker, will be submitted to the Services My Way Program Coordinator for review and approval. The support broker will conduct a comprehensive orientation and training with the waiver participant/representative-employer using standard, easy to understand materials approved by DHCF. The support broker will also assist the participant/representative employer in completing forms and agreements and providing required information as requested in the Participant/Representative Employer Enrollment Packet and PDW Employment and Individual-Directed Goods and Services Vendor Engagement Packet prepared and distributed by the VF/EA FMS-Support Broker entity and any other forms and/or agreements, as required by DHCF.

#### New Waiver Participants –

New waiver participants will be connected with waiver services through the Aging and Disability Resource Center (ADRC) within the DC Office on Aging (DCOA). Medicaid Enrollment Specialists at the ADRC will provide comprehensive options counseling and introduce EPD waiver applicants to the Services My Way program and participant-directed services using standard, easily understandable information approved by DHCF. If an EPD waiver applicant expresses an interest in enrolling in the Services My Way program, the Medicaid Enrollment Specialist will assist the individual with completing a Consumer Inquiry Form. The form will be submitted to the Services My Way Program Coordinator, who will contact the participant and his/her assigned waiver case manager after the participant is enrolled in the EPD waiver regarding enrollment in the Services My Way program. The participant will then work

with the waiver case manager and support broker as described above for currently enrolled waiver participants.

Entities Supporting Individuals:

The VF/EA FMS-Support Broker entity selected through an RFP will work with waiver participants enrolled in the Services My Way program to provide support and facilitate their success in self-directing their approved PDCS and individual-directed goods and services and managing their PDS budget. The VF/EA FMS-Support Broker entity will operate in accordance with Section 3504 of the Internal Revenue Code and Rev. Proc. 70-6, as modified by REG-137036-08 and Rev. Proc. 2013-39 and will provide both financial management services (FMS) and information and assistance (I&A) services as administrative activities. The scope of FMS and I&A services provided by the VF/EA FMS-Support Broker entity are described in detail in subsequent sections.

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**b. Participant Direction Opportunities. Specify the participant direction opportunities that are available in the waiver.**

The waiver provides for both participant direction opportunities as specified in Appendix E-2. Supports and protections are available for participants who exercise these authorities.

**c. Availability of Participant Direction by Type of Living Arrangement. Check each that applies:**

Participant direction opportunities are available to participants who live in their own private residence or the home of a family member.

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**d. Election of Participant Direction. Election of participant direction is subject to the following policy (select one):**

The waiver is designed to afford every participant (or the participant's representative) the opportunity to elect to direct waiver services. Alternate service delivery methods are available for participants who decide not to direct their services.

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**e. Information Furnished to Participant. Specify: (a) the information about participant direction opportunities (e.g., the benefits of participant direction, participant responsibilities, and potential liabilities) that is provided to the participant (or the participant's representative) to inform decision-making concerning the election of**

**participant direction; (b) the entity or entities responsible for furnishing this information; and, (c) how and when this information is provided on a timely basis.**

All waiver participants will receive information about using participant-directed services (PDS). As noted above, information regarding PDS will initially be provided to new waiver participants by Medicaid Enrollment Specialists at the ADRC, and to current waiver participants by their waiver case manager. For all waiver participants, the waiver case manager documents the participant's choice of service delivery model in the person-centered ISP. Waiver case managers will also advise participants of their opportunity to change their method of waiver service delivery at any time. Waiver case managers will also re-introduce and provide information about PDS to waiver participants and document the participant's decision as to whether or not to use PDS each time the person-centered ISP is updated if the waiver participant is not already enrolled in the Services My Way program.

With the support of an expert PDS consultant, DHCF has developed materials to inform current and prospective waiver participants about the benefits and potential liabilities of using PDS. Orientation and training materials provided to participants and their representatives, as appropriate, include, but may not be limited to, details about self-directing their PDS, managing their PDS budget, using FMS and support broker services, being a common law employer, and general Medicaid and non-Medicaid rights and responsibilities.

These materials will be distributed to the Medicaid Enrollment Specialists at the ADRC and to all waiver case managers as part of their PDS training, and will be made available on the DHCF and ADRC websites. This information will be shared with all waiver participants upon enrolling in the EPD waiver and during each person-centered ISP update if the participant is not already enrolled in the Services My Way program. This information is written at a level that is easily understood using every day common language to ensure accessibility, and is provided in multiple languages.

The support broker is responsible for providing orientation and training to the participant/representative employer prior to employing a PDW. Initial orientation and training is based upon a standard curriculum developed by DHCF and includes the following:

- Review of the information and forms contained in both the Participant/Representative Employer Enrollment and PDW Employment and Individual-Directed Goods and Services Engagement Packets and how they should be completed;
- The role and responsibilities of the common law employer;
- The role and responsibilities of the VF/EA FMS Division and support broker;
- The process for receipt and processing PDW timesheets and payroll checks;

- The process for purchasing approved individual-directed goods and services from vendors, including submitting invoices for payment;
- Effective practices for recruiting, hiring, training, supervising, managing and firing PDWs;
- The process for resolving issues and complaints; and
- Reviewing workplace safety issues, obtaining workers' compensation insurance coverage and reporting PDW workplace injuries.

In addition, the support broker is responsible for providing ongoing skills training to participants and working with the participant's case manager and VF/EA FMS Division to identify any participants who may need and/or desire additional employer skills training.

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##### **f. Participant Direction by a Representative. Specify the State's policy concerning the direction of waiver services by a representative (select one):**

The State provides for the direction of waiver services by representatives.

##### **Specify the representatives who may direct waiver services: (check each that applies):**

Waiver services may be directed by a non-legal representative freely chosen by an adult participant.

##### **Specify the policies that apply regarding the direction of waiver services by participant-appointed representatives, including safeguards to ensure that the representative functions in the best interest of the participant:**

The participant may designate an authorized representative to exercise employer-related responsibilities. An authorized representative is a person who is the participant's substitute decision-maker, family member, or any other identified individual who willingly accepts responsibility for performing employer and budget management tasks that a participant is unable to perform him or herself. An authorized representative must evince a personal commitment to the participant, be willing to follow the participant's wishes and respect the participant's preferences, while using sound judgment to act in the best interest of the participant. The authorized representative must be actively engaged in the participant's life and live in his or her community. An authorized representative also must execute a Designation of Authorized Representative form. A participant may have one of three (3) types of authorized representatives. These include:

**Pre-determined Representative** - The participant has a legal guardian or other court appointed representative in place at the time of enrollment and that individual will serve as the designated representative on the individual's behalf.

Voluntary Representative – The participant requests that a representative serve on his/her behalf, or a support broker recommends that the participant designate a representative and the participant agrees. Representatives can include family member, friend or other person who is actively involved in the participant’s life, chosen by the participant and who shares authority with the participant for managing the participant’s PDS budget. This authority must reflect the desires and preferences of the participant and may include being the common law employer of the participant’s PDWs, when appropriate. The participant, with assistance from his/her support broker, as needed, selects his or her authorized representative.

Mandated Representative –A person the State appoints and requires the participant accept as his/her authorized representative. A mandated representative may be appointed when a participant has misspent funds or function has deteriorated in such a way that the participant is no longer able to manage the PDS budget. There may be other reasons that cause the State to appoint a mandated representative as a condition of continued participation in the Services My Way program.

All types of authorized representatives receive no monetary compensation for being an authorized representative, and may not serve as a paid PDW for the participant. All authorized representatives must meet the following requirements:

- i. Effectuate, as much as possible, the decision the waiver participant would make for him/herself.
- ii. Accommodate the participant, to the extent necessary, so he/she can participate as fully as possible in all decisions. Accommodations include, but are not limited to, communication devices, interpreters, and physical assistance.
- iii. Give due consideration to all information including the recommendations of other interested and involved parties.
- iv. Embody the guiding principles of participant direction.
- v. Waiver participants and authorized representatives are responsible for working collaboratively to ensure:
  1. Waiver participants receive high quality services,
  2. Waiver participants receive needed PDCS from qualified PDWs, and
  3. Services are provided in accordance with the guiding principles of participant direction and in accordance with federal and state Medicaid and program requirements and with the waiver participant’s person-centered ISP and PDS budget.

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**g. Participant-Directed Services. Specify the participant direction opportunity (or opportunities) available for each waiver service that is specified as participant-directed in Appendix C-1/C-3.**

See table in PDF.

Employer authority and budget authority are available for Participant-Directed Community Support. Budget authority is available for Individual-Directed Goods and Services.

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**h. Financial Management Services. Except in certain circumstances, financial management services are mandatory and integral to participant direction. A governmental entity and/or another third-party entity must perform necessary financial transactions on behalf of the waiver participant. Select one:**

Yes. Financial Management Services are furnished through a third party entity. (Complete item E-1-i).

Specify whether governmental and/or private entities furnish these services. Check each that applies:

Private entities

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**i. Provision of Financial Management Services. Financial management services (FMS) may be furnished as a waiver service or as an administrative activity. Select one:**

FMS are provided as an administrative activity.

**i. Types of Entities: Specify the types of entities that furnish FMS and the method of procuring these services:**

FMS are provided to all waiver participants enrolled in the Services My Way program by one, District-wide, qualified VF/EA FMS-Support Broker entity, selected through a competitive procurement process (RFP).

**ii. Payment for FMS. Specify how FMS entities are compensated for the administrative activities that they perform:**

The VF/EA FMS-Support Broker entity receives a per participant per day administrative fee for the VF/EA FMS administrative service provided that is established through the competitive

procurement process. The selected vendor must apply the per participant per day fee consistently with each waiver participant/representative employer actively enrolled with the vendor.

The VF/EA FMS-Support Broker entity receives a separate per participant per day administrative fee for the support broker service provided by the VF/EA FMS-Support Broker entity, established through the competitive procurement process. The selected vendor must apply the per participant per day fee consistently with each waiver participant/representative employer actively enrolled with the vendor.

The VF/EA FMS-Support Broker entity receives a separate one-time set-up fee for enrolling the participant/representative employer with the VF/EA FMS-Support Broker entity. The one-time set-up fee is consistent for each waiver participant/representative employer.

The VF/EA FMS-Support Broker entity receives a separate one-time set-up fee for enrolling the PDW in the VF/EA FMS-Support Broker entity's PDW payroll system. The one-time set-up fee is consistent for each qualified PDW.

**iii. Scope of FMS. Specify the scope of the supports that FMS entities provide (check each that applies):**

Supports furnished when the participant is the employer of direct support workers:

Assists participant in verifying support worker citizenship status

Collects and processes timesheets of support workers

Processes payroll, withholding, filing and payment of applicable federal, state and local employment-related taxes and insurance

Other

Specify:

The VF/EA FMS/Support Broker entity will operate in accordance with §3504 of the Internal Revenue Code and Rev. Proc. 70-6, as modified by REG-137036-08 and Rev. Proc. 2013-39, as well as applicable federal and District labor, citizenship and immigration, and workers' compensation requirements. In addition, the entity will offer the following FMS:

- Obtaining federal and District approval to perform as a VF/EA (e.g., filing and submission of IRS Forms 2678, and 8821, and DC powers of attorney for income tax and unemployment tax filing and payments);
- Preparing and maintaining a DC-specific VF/EA FMS-Support Broker Policies and Procedures Manual that includes written policies, procedures and internal controls for all VF/EA FMS and Support Broker tasks and updating it as needed and at least annually;

- Staying up-to-date with all federal and state program, labor, employment tax and workers' compensation insurance requirements related to participant/representative employers, their PDWs, and VF/EA FMS;
- Developing a transition plan to allow for least disruption of services for waiver participants transitioning from traditional PCA waiver services to PDS or back to traditional PCA waiver services;
- Developing a transition plan for when/if the VF/EA FMS – Support Broker entity changes to facilitate the transition process and in accordance with DHCF requirements;
- Receiving and disbursing Medicaid funds and monitoring any balances;
- Submitting claims for Medicaid reimbursement for PDCS and individual-directed goods and services rendered;
- Submitting invoices to DHCF for VF/EA FMS and Support Broker administrative fees;
- Providing customer service (i.e., toll free phone and TYY numbers, information in alternate formats, foreign language translation and ASL, tracking calls and complaints, conducting complaint resolution and satisfaction surveys (paper, web-based, phone) per DHCF requirements;
- Preparing and distributing Participant/Representative-Employer Enrollment Packets;
- Collecting and processing the completed forms, agreements and information requested in the Participant/Representative-Employer Enrollment Packets;
- Preparing and distributing the PDW Employment and Individual-directed Goods and Services Vendor Engagement Packets;
- Collecting and processing the completed forms, agreements and information requested in the PDW Employment and Individual-directed Goods and Services Vendor Engagement Packets;
- Enrolling waiver participant/representative employers with the VF/EA FMS-Support Broker entity;
- Enrolling PDWs in the VF/EA FMS-Support Broker entity's payroll system;
- Processing criminal background checks for PDW candidates and providing results to DHCF, waiver participant/representative employers and PDW candidates;
- Reporting PDWs in the DC New Hire Reporting System;
- Assisting participant/representative employers with determining citizenship and legal alien status by processing the US CIS Form I-9;

- Collecting and processing PDWs' timesheets in accordance with a participant's person-centered ISP and PDS budget;
- Processing PDW payroll including paying wages in compliance with the DC Living Wage Act and filing and paying federal and District of Columbia required taxes;
- Processing garnishments liens and levies against PDWs' wages;
- Processing end-of-year federal and state tax activities including IRS Forms W-2, FICA refunds, and DC tax reconciliations, as required;
- Receiving and processing invoices from individual-directed goods and services vendors for payment;
- Processing returned payments (i.e. payroll checks or payments to individual-directed goods and services providers) in accordance with the District's Unclaimed Property Law;
- Managing the receipt and renewal of workers' compensation insurance policies for waiver participant/representative-employers;
  - o Paying workers' compensation insurance premiums on behalf of the participant/representative employer;
  - o Providing wage information to the workers' compensation insurance carrier to determine workers' compensation insurance benefits, and
  - o Being the site for the annual workers' compensation insurance audit;
- Establishing and maintaining current and archived records and files in a confidential and secure manner and for required time period;
- Implementing and testing a disaster recovery plan for electronic data and files;
- Preparing and submitting DHCF required reports; and
- Executing Medicaid provider agreements for PDWs and individual-directed goods and services vendors as authorized under a written agreement with the Medicaid agency and maintaining them on file.

**Supports furnished when the participant exercises budget authority:**

Maintains a separate account for each participant's participant-directed budget

Tracks and reports participant funds, disbursements and the balance of participant funds

Processes and pays invoices for goods and services approved in the service plan

Provide participant with periodic reports of expenditures and the status of the participant-directed budget

**Additional functions/activities:**

Executes and holds Medicaid provider agreements as authorized under a written agreement with the Medicaid agency

Receives and disburses funds for the payment of participant-directed services under an agreement with the Medicaid agency or operating agency

Provides other entities specified by the State with periodic reports of expenditures and the status of the participant-directed budget

Other

Specify:

The VF/EA FMS-Support Broker entity must provide accurate and timely reports monthly and annually to the participant/representative employer, support broker, waiver case manager and the Services My Way Program Coordinator. This report details service utilization in comparison to the participant's PDS budget and any over- or under-utilization.

In addition, the VF/EA FMS-Support Broker entity must provide required reports that address service utilization and expenditures on the individual and aggregate levels on a quarterly and annual basis to DHCF and its designees.

**iv. Oversight of FMS Entities. Specify the methods that are employed to: (a) monitor and assess the performance of FMS entities, including ensuring the integrity of the financial transactions that they perform; (b) the entity (or entities) responsible for this monitoring; and, (c) how frequently performance is assessed.**

DHCF will monitor and assess the readiness and ongoing performance of the VF/EA FMS-Support Broker entity through a number of monitoring activities. DHCF will conduct a readiness review of the VF/EA FMS-Support Broker entity prior to the contract being finalized and services being implemented. DHCF will also conduct an annual VF/EA FMS-Supports Broker Entity Quality Assessment and Performance Review using the methods described earlier in Appendix A (5) and (6). The VF/EA FMS-Support Broker entity will be required to prepare and submit monthly utilization and expenditure reports to DHCF as required. DHCF's Office of Contracts and Procurement (OCP), in collaboration with the Health Care Delivery Management Administration's (HCDMA) Division of Quality and Health Outcomes (DQHO), will address other quality assurance related issues as they arise.

DHCF will conduct a participant/representative employer satisfaction survey within 60 days of the participant enrolling in the Services My Way program, and on an annual basis thereafter.

DHCF will analyze the survey results and include them in the VF/EA FMS-Support Broker entity annual performance review.

The VF/EA FMS-Support Broker entity will be required to develop an ongoing Quality Assurance Monitoring Plan, subject to DHCF approval, that includes the following elements:

- Key indicators/measures of quality related to the provision of VF/EA FMS and support broker services;
- A description of how the VF/EA FMS-Support Broker entity plans to monitor these key indicators/measures;
- A description of how the VF/EA FMS-Support Broker entity shall develop, implement, and evaluate corrective actions or modifications to overall operations as necessary to address quality concerns;
- A description of the staffing resources responsible for the quality assurance plan and quality assurance activities;
- Samples of all reports related to quality assurance and performance monitoring, along with descriptions of their use and who is responsible for reviewing them; and
- A description of how the quality assurance plan shall help DHCF meet all quality assurances as described in its EPD waiver.
- Based on survey results from the Participant/Representative Employer Satisfaction Survey provided by DHCF, the VF/EA FMS-Support Broker entity shall prepare a corrective action plan to address the issues raised as applicable and incorporate issues into its quality assurance process and VF/EA FMS-Support Broker entity's policies, procedures and internal controls, as appropriate.

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**j. Information and Assistance in Support of Participant Direction. In addition to financial management services, participant direction is facilitated when information and assistance are available to support participants in managing their services. These supports may be furnished by one or more entities, provided that there is no duplication. Specify the payment authority (or authorities) under which these supports are furnished and, where required, provide the additional information requested (check each that applies):**

Case Management Activity. Information and assistance in support of participant direction are furnished as an element of Medicaid case management services.

**Specify in detail the information and assistance that are furnished through case management for each participant direction opportunity under the waiver:**

Case management services facilitate coordination of all waiver services, including participant-directed services, provided to participants so that services are delivered in a well-coordinated, safe, timely and cost-efficient manner that addresses the participant's specific needs. Case management services for all waiver participants are detailed in Appendix D. In addition to all responsibilities detailed in Appendix D, a participant's waiver case manager performs the following information and assistance tasks related to PDS:

- Conducts initial outreach and education on the Services My Way program for waiver participants using standard outreach and PDS information materials, and documents the participant's decision to use PDS or not and the reason for the decision.
- Re-introduces the Services My Way program to waiver participants not enrolled in PDS and documents the participant's decision to use PDS or not and the reason for the decision each time the participant's person-centered ISP is updated using standard outreach and PDS information materials.
- Identifies waiver participants' desired outcomes for using PDS under a person-centered planning process.
- Assists participants who wish to enroll in the Services My Way program to complete a DHCF Consumer Inquiry Form and Participant Consent Form.
- Submits executed DHCF Consumer Inquiry and Participant Consent Forms to the Services My Way Program Coordinator for processing.
- Includes PDS in the participant's person-centered ISP and computes the participant's PDS monthly allocation amount.
- Provides copies of the participant's updated and approved person-centered ISP, risk management plan and PDS monthly allocation amount to the participant and his/her representative, as appropriate, the waiver participant's support broker, and the Services My Way Program Coordinator.
- Monitors participant/representative employer performance in using PDS in collaboration with the participant's support broker.
- Participates in the Remediation, Training and Termination process with the Services My Way Program Coordinator, VF/EA FMS Division, support broker and other entities, as appropriate.
- Assesses participants' and representatives', as appropriate, receipt of and satisfaction with PDS in collaboration with the participant's support broker.
- Assesses participants' and representatives' receipt of and satisfaction with traditional services.
- Apprises participants of general Medicaid and non-Medicaid rights and responsibilities.

**Waiver Service Coverage. Information and assistance in support of participant direction are provided through the following waiver service coverage(s) specified in Appendix C-1/C-3 (check each that applies):**

See table in PDF.

Information and assistance services are provided through the following waiver services: case management, participant-directed community support, and individual-directed goods and services.

Administrative Activity. Information and assistance in support of participant direction are furnished as an administrative activity.

**Specify (a) the types of entities that furnish these supports; (b) how the supports are procured and compensated; (c) describe in detail the supports that are furnished for each participant direction opportunity under the waiver; (d) the methods and frequency of assessing the performance of the entities that furnish these supports; and, (e) the entity or entities responsible for assessing performance:**

The Support Broker Division of the VF/EA FMS-Support Broker entity will furnish information and assistance (I&A) supports to waiver participants enrolled in the Services My Way program and their representatives as appropriate. As detailed above, the I&A supports will be procured through a competitive bidding process (RFP) to secure one VF/EA FMS-Support Broker entity, which will serve all waiver participants enrolled in the Services My Way program and their representatives, as appropriate, in the District. Furthermore, as detailed above, the VF/EA FMS-Support Broker entity will receive a consistent per participant per day fee for support broker services.

A waiver participant's support broker furnishes the following I&A supports related to PDCS and individual-directed goods and services:

- Provides initial orientation to waiver participants and their representatives, as appropriate, on using the Services My Way program, self-directing their PDS and managing their PDS budget, using FMS and support broker services, being a common law employer, and general Medicaid and non-Medicaid rights and responsibilities.
- Provides initial skills training on using the Services My Way program, self-directing their PDS, and managing their PDS budget, using FMS and support broker services, being a common law employer, and general Medicaid and non-Medicaid rights and responsibilities.
- Provides ongoing skills training on using the Services My Way program, self-directing their PDS and managing their PDS budget, using FMS and support broker services, being a common law employer, and general Medicaid and non-Medicaid rights and responsibilities as needed.

- Assists waiver participant/representative employers in providing the information requested in and completing the forms and agreements included in the Participant/Representative-Employer Enrollment Packet and Participant-directed Worker (PDW) Employment and Individual-Directed Goods and Services Vendor Engagement Packet.
- Assists participant/representative employers in developing, implementing, monitoring effectiveness and revising, as needed, emergency back-up and natural support plans and designated emergency back-up staff and natural supports.
- Assists waiver participants in designating an authorized representative, if needed and wanted, assessing effectiveness of the authorized representative and selecting a new authorized representative, if necessary.
- Receives waiver participants' PDS monthly allocation amount from the waiver case manager to develop, with the waiver participant and his/her representative, as appropriate, his/her initial PDS budget and any updated budgets.
- Develops, with the waiver participant and his/her representative, as appropriate, the participant's PDS budget for approval from the Services My Way Program Coordinator.
- Updates, with the waiver participant and his/her representative, as appropriate, the waiver participant's PDS budget and submits the budget for approval from the Services My Way Program Coordinator.
- Develops with the participant and his/her representative, as appropriate, proposals to reallocate PDS budget funds from labor to individual-directed goods and services or vice versa and submits them for approval from the Services My Way Program Coordinator.
- Assists the participant and his/her representative, as appropriate, in tracking his/her PDS expenditures in accordance with the participant's PDS budget.
- Assists participants and representatives, as appropriate, in identifying and accessing PDS.
- Assists participants and representatives, as appropriate, in making decisions about purchasing individual-directed goods and services.
- Assists participants and representatives, as appropriate, in resolving issues as they arise.
- Conducts periodic in-home visits and phone calls with participants to monitor that their PDS is being provided in accordance with the participant's individual service plan and PDS budget, their health and safety and to answer questions or concerns.
  - o The support broker will document their findings in each waiver participant's file at the VF/EA FMS-Support Broker entity.

o A copy of the findings will be provided to the Services My Way Program Coordinator and the participant's waiver case manager.

- Assesses waiver participants' and representatives' use of and satisfaction with PDS through conducting quarterly in-home visits and monthly telephone contacts with participants and representatives.
- Assesses effectiveness of participants' authorized representative and suggests modification, as needed.
- Assesses effectiveness of participant/representative employer's emergency PDW backup plan and designated staff and suggests modifications, as needed.
- Assesses effectiveness of participant/representative employer's natural supports plan and delegated natural supports and suggests modifications, as needed.
- Assesses effectiveness of participant's risk mitigation plan related to the receipt of PDS and suggests modifications to the plan, as needed.
- Reports critical incidents as a mandatory reporter.
- Participates in the Remediation, Training and Termination process with Services My Way Program Coordinator, waiver case manager, VF/EA FMS Division, and other entities, as appropriate.

As detailed above, the VF/EA FMS-Support Broker entity performance is assessed prior to implementation through a readiness review conducted by DHCF. Following implementation of services, DHCF conducts an annual VF/EA FMS-Support Broker Entity Quality Assessment and Performance Review. All quality assessments and performance reviews of the VF/EA FMS-Support Broker entity include the I&A supports described above. DHCF also conducts participant/representative employer satisfaction surveys within 60 days of enrollment in the Services My Way program and annually thereafter. The surveys address satisfaction with the I&A services furnished by support brokers as described above.

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##### **k. Independent Advocacy (select one).**

No. Arrangements have not been made for independent advocacy.

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**l. Voluntary Termination of Participant Direction. Describe how the State accommodates a participant who voluntarily terminates participant direction in order to receive services through an alternate service delivery method, including how the State assures continuity of**

**services and participant health and welfare during the transition from participant direction:**

Waiver participants have the option to transition from participant direction to the provider-managed service delivery model at any time. This is accomplished by the participant completing the Voluntary Participant Termination Notice and sending it to the Services My Way Program Coordinator for processing. The Program Coordinator will then inform the participant's support broker and waiver case manager of the participant's decision. The waiver case manager will then guide the waiver participant through the transition process and be responsible for transitioning the waiver participant to the traditional model of service. The waiver case manager will ensure there is no break in service during the transition period, and secure all necessary supports for the waiver participant.

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**m. Involuntary Termination of Participant Direction. Specify the circumstances when the State will involuntarily terminate the use of participant direction and require the participant to receive provide-managed services instead, including how continuity of services and participant health and welfare is assured during the transition.**

DHCF will develop and implement remediation, training and termination protocol when required for participant/representative-employers who fail to comply with the terms of the Participant/Representative Employer Agreement. Non-compliance with the Participant/Representative Employer Agreement may be discovered by the VF/EA FMS-Support Broker entity, the waiver participant's support broker, the waiver participant's waiver case manager, or DHCF staff.

Participant/Representative Employers will be allowed three (3) episodes of non-compliance in the first 12-month period of enrollment in the Services My Way program (and every 12-month period thereafter). The third episode of non-compliance will necessitate the participant's termination from the Services My Way program and a transition to traditional Personal Care Aide (PCA) services. "Traditional" PCA services refer to those PCA services provided by a home health agency.

When a common law employer is first found to be out of compliance with the Participant/Representative Employer Agreement, the following steps shall occur:

A. The Services My Way Program Coordinator will issue a notification of non-compliance to the Participant/Representative Employer (and the assigned Support Broker) regarding the issue of non-compliance, which will:

- i. Identify the issue of non-compliance and request that the issue be corrected (if possible), and not repeated.

- ii. Detail requirements of the Participant-Directed Corrective Action Plan (PCAP).
- iii. Offer training and/or technical assistance.
- iv. Encourage the Participant/Representative Employer to direct questions to the Support Broker, including the following:
  - a. To request training or technical assistance, as needed.
  - b. To request a copy of the Participant/Representative Employer Agreement.
  - c. To ask questions about the notification of non-compliance.
  - d. To ask questions regarding how to correct the issue of non-compliance.
  - e. To obtain assistance in preparing and submitting the PCAP.
  - f. To designate a representative to perform as the Participant/Representative Employer (or designate a new representative).
- v. Identify consequences of further non-compliance with the Participant/Representative Employer Agreement.
- vi. Provide details on the participant's fair hearing and appeal rights regarding termination from the Services My Way program, should three (3) episodes of non-compliance occur in the first 12-month period of enrollment in the Services My Way program.

B. The Support Broker will provide copies of the notification to the participant's EPD Waiver Care Manager, the VF/EA FMS-Support Broker entity and other individuals, as necessary and appropriate.

C. Within five (5) business days of issuing the notification of non-compliance, the assigned Support Broker will contact the Participant/Representative Employer regarding the occurrence of non-compliance, and cover the following topics:

- i. Introductions, reason for the call and reference to the notification of non-compliance.
- ii. Identification and review of the issues of non-compliance and a request to have the Participant/Representative Employer describe the problem(s) experienced related to the issues of non-compliance.
- iii. A request that the issue be corrected (if possible) and not repeated.
- iv. Development of the PCAP.

- v. Review of the Participant/Representative Employer Agreement to answer questions regarding compliance.
- vi. Provide an explanation of mandated training and/or technical assistance, which may include:
  - a. Training and/or technical assistance conducted by the assigned Support Broker,
  - b. Training and/or technical assistance conducted by the FMS Division of the VF/EA FMS-Support Broker entity in collaboration with the assigned Support Broker.
- vii. Identify the consequences should three (3) episodes of non-compliance occur in the first 12-month period of enrollment in the Services My Way program (and every 12-month period thereafter), wherein DHCF may terminate the Participant/Representative Employer Agreement with the participant, terminating the participant from the Services My Way program and transition him/her to traditional PCA services.

D. Within five (5) business days of the above mentioned contact, the assigned Support Broker, with the participant and his/her representative, as applicable, will draft a written PCAP based on the conversation and decisions made regarding mandatory training and/or technical assistance, timelines for completion of mandatory training and/or technical assistance, and consequences of not receiving the mandated training and/or technical assistance. The participant and his/her representative, as applicable, must sign the PCAP upon completion. The Support Broker will provide copies of the signed PCAP to the participant's EPD Waiver Care Manager, VF/EA FMS-Support Broker entity and other individuals, as necessary and appropriate.

- i. The Support Broker will be responsible for monitoring the PCAP. If the participant or his/her representative, as applicable, fails to implement the PCAP as agreed upon, this will be considered an episode of non-compliance which will be reported by the Support Broker to the Services My Way Program Coordinator.

Second Episode of Non-Compliance: When a Participant/Representative-Employer is found to be out of compliance with the Participant/Representative Employer Agreement for a second time, the following steps will occur:

- A. DHCF will issue a second notification of non-compliance to the Participant/Representative-Employer (and the assigned Support Broker) regarding the second occurrence of non-compliance, which will:
  - i. Identify the issue of non-compliance and request that the issue be corrected (if possible), and not repeated.

- ii. Detail requirements of the PCAP.
  - iii. Offer training and/or technical assistance.
  - iv. Instruct the Participant/Representative-Employer to direct questions to the assigned Support Broker, including the following:
    - a. To request training or technical assistance, as needed.
    - b. To request a copy of the Participant/Representative Employer Agreement.
    - c. To ask questions about the notification of non-compliance.
    - d. To ask questions regarding how to correct the issue of non-compliance.
    - e. To designate a representative to perform as the Participant/Representative Employer (or designate a new representative).
    - f. To obtain assistance in preparing and submitting the PCAP.
  - v. Identify consequences of further non-compliance with the Participant/Representative Employer Agreement.
  - vi. Provide details on the participant's fair hearing and appeal rights regarding termination from the Services My Way program, should three episodes of non-compliance occur in the first 12-month period of enrollment in the Services My Way program (and every 12-month period thereafter).
- B. DHCF will share a copy of the notification of non-compliance with the assigned Support Broker, who will provide copies of the notification to the participant's EPD Waiver Care Manager, VF/EA FMS-Support Broker entity, and other individuals, as necessary and appropriate.
- C. Within five (5) business days of issuing the notification of non-compliance, the assigned Support Broker will contact the Participant/Representative Employer regarding the occurrence of non-compliance, and cover the following topics:
- i. Introductions, reason for the call and reference to the notification of non-compliance.
  - ii. Identification and review of the issues of non-compliance and a request to have the Participant/Representative Employer describe the problem(s) experienced related to the issues of non-compliance.
  - iii. A request that the issue be corrected (if possible) and not repeated.

- iv. Development of the PCAP.
- v. Review of the Participant/Representative Employer Agreement to answer questions regarding compliance.
- vi. Provide an explanation of mandated training and/or technical assistance, which may include:
  - a. Training and/or technical assistance conducted by the assigned Support Broker,
  - b. Training and/or technical assistance conducted by the FMS Division of the VF/EA FMS-Support Broker entity in collaboration with the assigned Support Broker.
- vii. Identify the consequences should a third episode of non-compliance occur in the first 12-month period of enrollment in the Services My Way program, wherein DHCF may terminate the Participant/Representative Employer Agreement with the participant, terminating the participant from the Services My Way program and transition to traditional PCA services.

D. Within five (5) business days of the above mentioned contact, the assigned Support Broker, with the participant and his/her representative, as applicable, will draft a written PCAP based on the conversation and decisions made regarding mandatory training and/or technical assistance, timelines for completion of mandatory training and/or technical assistance, and consequences of not receiving the mandated training and/or technical assistance. The participant and his/her representative, as applicable, must sign the PCAP upon completion. The Support Broker will provide copies of the signed PCAP to the participant's EPD Waiver Care Manager, VF/EA FMS-Support Broker entity, and other individuals, as necessary and appropriate.

- i. The Support Broker will be responsible for monitoring the PCAP. If the participant or his/her representative, as applicable, fails to implement the PCAP as agreed upon, this will be considered an episode of non-compliance which will be reported by the Support Broker to the Services My Way Program Coordinator.

Third Episode of Non-Compliance: When a Participant/Representative Employer is found to be out of compliance with the Participant/Representative-Employer Agreement for a third time, following the participation and completion of mandatory training and/or technical assistance to remediate the issue via successful implementation of the PCAP, the following steps will occur:

A. DHCF will issue a notification of non-compliance to the Participant/Representative Employer (and the assigned Support Broker) regarding the third and final episode of non-compliance, which will note that:

- i. The Participant/Representative Employer has had a third episode of non-compliance.
  - ii. DHCF is terminating the Participant/Representative Employer Agreement with the participant, per earlier notification.
  - iii. The participant will transition to traditional PCA services.
    - a. The participant may ask for a fair hearing from the Office of Administrative Hearings or the Office of Health Care Ombudsman. If a request for a fair hearing is filed before termination from the Services My Way program (i.e., within thirty (30) days of the date on the notice), the participant will continue to receive current services while the appeal is pending.
- B. The Support Broker will provide copies of the notification to the participant's EPD Waiver Care Manager, the VF/EA FMS-Support Broker entity and other individuals, as necessary and appropriate.
- C. Within five (5) business days of issuing the notification of non-compliance, the assigned Support Broker will contact the participant regarding the third and final occurrence of non-compliance, and will cover the following topics:
- i. Introductions, reason for the call and reference to the first, second, and third notifications of non-compliance.
  - ii. Review of consequences of non-compliance (i.e., three (3) episodes in one 12-month period).
  - iii. Process for transitioning the participant to traditional PCA services with support from the assigned EPD Waiver Care Manager.
  - iv. Details on the participant's fair hearing and appeal rights regarding termination from the Services My Way program.
- D. Within five (5) business days of the above mentioned contact, the Support Broker will initiate completion of the Participant Termination Notice, in accordance with the Participant Termination Notice Instructions.

#### **Appendix E: Participant Direction of Services E-1: Overview (13 of 13)**

**n. Goals for Participant Direction. In the following table, provide the State's goals for each year that the waiver is in effect for the unduplicated number of waiver participants who are expected to elect each applicable participant direction opportunity. Annually, the**

**State will report to CMS the number of participants who elect to direct their waiver services.**

See table in PDF.

In Waiver Years 4 and 5, the District hopes to serve 100 and 140 waiver participants, respectively.

**E-2: Opportunities for Participant Direction (1 of 6)**

a. Participant - Employer Authority Complete when the waiver offers the employer authority opportunity as indicated in Item E-1-b:

**i. Participant Employer Status. Specify the participant's employer status under the waiver.**

Participant/Common Law Employer. The participant (or the participant's representative) is the common law employer of his/her participant-directed workers. The VF/EA FMS-Support Broker entity, operating in accordance with §3504 of the Internal Revenue Code and Rev. Proc. 70-6, as modified by REG – 137036-08 and Rev. Proc. 2013-39, functions as the agent to the participant/representative-employer to do either all that is required of the employer for wages paid on the employer's behalf or all that is required of the payer for requirements of backup withholding as required by federal and state law. Supports are available to assist the participant in performing the employer-related functions.

**ii. Participant Decision Making Authority. The participant (or the participant's representative) has decision making authority over workers who provide waiver services. Select one or more decision making authorities that participants exercise:**

Recruit staff

Hire staff as common law employer

Verify staff qualifications

Obtain criminal history and/or background investigation of staff

Specify how the costs of such investigations are compensated:

Each potential participant-directed worker (PDW) will pay for his or her combined FBI and District of Columbia criminal background check. Completing and passing the combined criminal background check is a condition of employment as a PDW. The criminal background check will be facilitated by the VF/EA FMS Division and results will be provided to the participant/representative employer and the Services My Way Program Coordinator.

Specify additional staff qualifications based on participant needs and preferences so long as such

qualifications are consistent with the qualifications specified in Appendix C-1/C-3.

Determine staff duties consistent with the service specifications in Appendix C-1/C-3.

Determine staff wages and benefits subject to State limits

Schedule staff

Orient and instruct staff in duties

Supervise staff

Evaluate staff performance

Verify time worked by staff and approve time sheets

Discharge staff (common law employer)

Other

Specify:

Benefits to PDWs will only include the payment of Medicare and Social Security taxes (FICA), federal and state unemployment insurance taxes, and workers compensation insurance coverage.

## **E-2: Opportunities for Participant-Direction (2 of 6)**

**b. Participant - Budget Authority Complete when the waiver offers the budget authority opportunity as indicated in Item E-1-b:**

**i. Participant Decision Making Authority. When the participant has budget authority, indicate the decision-making authority that the participant may exercise over the budget. Select one or more:**

Reallocate funds among services included in the budget

Determine the amount paid for services within the State's established limits

Substitute service providers

Schedule the provision of services

Specify additional service provider qualifications consistent with the qualifications specified in Appendix C-1/C-3

Specify how services are provided, consistent with the service specifications contained in Appendix C-1/C-3

Identify service providers and refer for provider enrollment

Authorize payment for waiver goods and services

Review and approve provider invoices for services rendered

## **E-2: Opportunities for Participant-Direction (3 of 6)**

### **b. Participant - Budget Authority**

**ii. Participant-Directed Budget Describe in detail the method(s) that are used to establish the amount of the participant-directed budget for waiver goods and services over which the participant has authority, including how the method makes use of reliable cost estimating information and is applied consistently to each participant. Information about these method(s) must be made publicly available.**

The participant-directed services (PDS) budget is developed based on the following methodology:

(1) A person-centered ISP is developed based on the results of a comprehensive assessment for long term care services and supports using a standard tool. The process for person-centered ISP development is the same for all waiver participants, regardless of service model. (2) Then, the total assessed hours per week for PDCS is determined and converted to hours per month. (3) Then, total PDCS hours per month are multiplied by the traditional rate of payment for PCA services. (4) The total amount computed in Item 3 is then reduced by a pre-determined percentage to reflect the administrative overhead amount in the traditional PCA rate. (5) The resultant amount represents the participant's PDS monthly allocation amount, which will be used to compute his/her PDS budget.

The participant's PDS budget is developed by the participant and his/her support broker by executing the following steps:

(1) The PDS budget contains two (2) cost components: PDCS labor and individual-directed goods and services. (2) The participant will determine the wage rate paid to his/her PDW(s) based on the wage range prescribed by DHCF, which shall be no less than the DC living wage and no more, including employment taxes and insurance amounts, than the current rate paid for traditional PCA services. (3) Individual-directed goods and services will be determined based on available funds remaining in the PDS budget after the PDCS budget amount is determined. This methodology will be used to determine PDS budgets for all waiver participants enrolled in the Services My Way program.

The waiver case manager is responsible for explaining the method used to develop the participant's PDS monthly allocation amount and sharing the amount with the participant during the person-centered ISP development process, and with the participant's support broker. Then,

the waiver participant works with his/her support broker to determine how the PDS budget will be developed and used to best serve the participant's needs while maintaining his/her health and welfare.

The participant's support broker submits the PDS budget to the Services My Way Program Coordinator, who must approve all PDCS and individual-directed goods and services requested in the budget. Once approved, the PDS budget is provided to the VF/EA FMS-Support Broker entity, which must pay PDWs for approved PDCS services rendered and invoices from vendors for approved individual-directed goods and services in accordance with the PDS budget.

Information about the PDS budgeting process will be made available to individuals who express an interest in PDS and those who choose to enroll in the Services My Way program through the outreach and training materials provided to them and will be available to the public on the DHCF website.

## **E-2: Opportunities for Participant-Direction (4 of 6)**

### **b. Participant - Budget Authority**

**iii. Informing Participant of Budget Amount. Describe how the State informs each participant of the amount of the participant-directed budget and the procedures by which the participant may request an adjustment in the budget amount.**

As detailed above, the waiver case manager informs the participant of his/her PDS monthly allocation amount during the person-centered ISP development process. After discussing the monthly allocation amount with the participant and his/her representative, as appropriate, the waiver case manager provides the amount to the participant's support broker, who then works with the waiver participant to develop a detailed PDS budget based on the monthly allocation amount.

If the participant's needs change at any time, the participant, with assistance from his/her support broker, may request an adjustment to his/her person-centered ISP and PDS budget by contacting his/her waiver case manager, who will ensure that the participant receives a reassessment. The Services My Way Program Coordinator will notify the participant and his/her support broker of the approval or denial of the request for an adjustment through issuance of a notification letter. If the participant disagrees with the Services My Way Program Coordinator's determination, the participant may request a redetermination of the request. The participant also has the right to the fair hearing and appeals process as outlined in Appendix F.

## **E-2: Opportunities for Participant-Direction (5 of 6)**

### **b. Participant - Budget Authority**

**iv. Participant Exercise of Budget Flexibility. Select one:**

Modifications to the participant directed budget must be preceded by a change in the service plan.

## **E-2: Opportunities for Participant-Direction (6 of 6)**

### **b. Participant - Budget Authority**

**v. Expenditure Safeguards. Describe the safeguards that have been established for the timely prevention of the premature depletion of the participant-directed budget or to address potential service delivery problems that may be associated with budget underutilization and the entity (or entities) responsible for implementing these safeguards:**

DHCF will implement a number of safeguards to prevent the premature depletion of the PDS budget, and address potential service delivery problems that may be associated with budget underutilization and the entities responsible for implementing these safeguards.

(1) The VF/EA FMS Division will prepare and issue a monthly PDS budget report to participant/representative employers and their support brokers, waiver case managers, and the Services My Way Program Coordinator. This report will provide the PDS budget amount, services used, and expenditures incurred for the current month and year to date, as well as the remaining balance. The support broker will review this report with the participant/representative employer during his/her monthly call and will address any questions.

(2) The VF/EA FMS Division will monitor PDCS utilization by pay period and notify the participant/representative employer, his/her support broker, the waiver case manager and the Services My Way Program Coordinator in writing of any overage or underutilization of PDCS. The support broker will then review the situation with the participant/representative employer and will address any questions. If there is an overage of PDCS use, the VF/EA FMS Division will collect the amount of the overage from the participant/representative employer. An overage of PDCS use will also activate the Participant Remediation, Training and Termination process detailed above, which will require the participant/representative employer to prepare a Corrective Action Plan with assistance from his/her support broker that will detail how the participant/representative employer will remedy the situation in the future, and the receipt of additional training as needed. The VF/EA FMS Division will identify episodes of significant PDCS underutilization by notifying the participant/representative employer, his/her support broker, waiver case manager, and the Services My Way Program Coordinator in writing. The participant/representative employer will then address the issue with his/her support broker and develop a Corrective Action Plan as necessary to remedy the situation in the future and receive additional training as needed.